IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 2416 of 2005**

Between:

T. Gattumallu, S/o. Shankaraiah,
Grampanchayat Polapelli, Thorrur Mandal, Warangal District.

**..... PETITIONER**

AND

1 The Collector, (Panchayat Wing), Warangal, Warangal District.
2 The District Panchayat Officer, Warangal, Warangal District.
3 Smt. S. Danamma, W/o. Venkanna,
Grampanchayat Polapelli, Thorru Mandal, Warangal District.
Srikakulam, Srikakulam District.

**.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ order or direction particularly a Writ of Certiorari, calling for records pertaining to the proceedings of the Collector (Panchayat Wing), Warangal, Warangal District in Rc.No. 3169/2004/A2, dt. 5-02-2005 and quash the same and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

**Counsel for the Petitioner : MR. J.VENKATESWARA REDDY**

**Counsel for the Respondent Nos.1 & 2: GP FOR PANCHAYAT RAJ & RURAL DEV.**

**Counsel for the Respondent No.3: Mr. A. Prabhakar Rao.**

**The Court at the stage of admission made the following :**

**THE HON'BLE MS. JUSTICE G.ROHINI**

**WRIT PETITION NO.2416 OF 2005**

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**ORAL ORDER :**

This writ petition is filed aggrieved by the order passed by the first respondent – The Collector (Panchayat wing), Warangal District dated 05-02-2005 disqualifying the petitioner with immediate effect from the post of Sarpanch of Polepally Gram Panchayat under Section 19(3) read with Section 22 of A.P. Panchayat Raj Act, 1994 (for short, 'the Act') for having given birth to third child after specified date and thereby directing the Extension Officer to intimate the casual vacancy for taking necessary further action.

The petitioner was elected as Sarpanch of Polepally Gram Panchayat, Thorrur Mandal, Warangal District in the year 2001. It appears that the third respondent

herein made a complaint to the respondents 1 and 2 alleging that the petitioner has given birth to a third child on 12-07-2004 and thus incurred disqualification under Section 19(3) of the Act. In pursuance thereof, the second respondent issued a show-cause notice dated 30-11-2004 calling upon the petitioner to explain as to why action should not be taken under Section 19(3) of the Act. The petitioner states that he submitted his reply on 10-12-2004 denying the allegations made in the complaint. Thereafter, the impugned order was passed by the 1st respondent on 5-2-2005 holding that the petitioner failed to produce any documentary evidence to substantiate his case as putforth in the Reply and to rebut the allegations in the show-cause notice and accordingly declaring that the petitioner is disqualified to hold the post of Sarpanch. The said order is under challenge in this writ petition.

I have heard the learned Counsel for the petitioner as well as the learned Government Pleader appearing for the respondents 1 & 2 and the learned Counsel appearing for the third respondent.

It is to be noted that the issue involved in this writ petition is squarely covered by a decision of the Division Bench in W.A.Nos.1537 & 1790 of 2003, dated 21-11-2003 in CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND ANOTHER. Having considered the scope of Sections 19 and 22 of the A.P. Panchayat Raj Act, in detail, the Division Bench held as under :

> *"… … on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 "subject to the provisions of Section 22 a member shall cease to hold Office" would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise."*

In the light of the ratio laid down in the said case by the Division Bench, I am of the view that in the absence of any adjudication under Section 22 of the Act, no action can be taken to declare that the petitioner is disqualified and therefore cannot continue in the office. Hence, the 1st respondent ought not to have issued the impugned proceedings holding that the petitioner incurred disqualification under Section 19(3) of the Act and therefore he is not entitled to continue as Sarpanch. The said impugned proceedings are void and without jurisdiction and cannot be sustained.

Accordingly, the impugned proceedings are set aside and the Writ Petition is allowed. No costs.

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23rd February, 2005.

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To

1 The Collector, (Panchayat Wing), Warangal, Warangal District.
2 The District Panchayat Officer, Warangal, Warangal District.
**3. Two CCs to G.P. for Panchayat Raj & Rural Development, High Court of AP Bldgs, Hyderabad (OUT).**

**4. 2 CD copies**